



Department of Justice

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JUSTICE DEPARTMENT TELLS COURT THAT MICROSOFT SETTLEMENT PROMOTES COMPETITION AND CONSUMER CHOICE

Justice Department Files Review of Final Judgments in Microsoft Case

WASHINGTON —The Department of Justice said today that competition and consumers have benefitted from the final judgments entered because of the Department's antitrust enforcement efforts against Microsoft. The judgment has protected the development and distribution of middleware -- including web browsers, media players, and instant messaging software -- that has increased choices available to consumers. In a joint filing in the U.S. District Court for the District of Columbia, the Department and the states of New York, Louisiana, Maryland, Ohio, and Wisconsin submitted a review of the final judgments entered in 2002 to resolve the antitrust case against Microsoft.

The core allegation in the original lawsuit, upheld by the U.S. Court of Appeals in June 2001, was that Microsoft had unlawfully maintained its monopoly in PC-based operating systems by excluding competing software products known as middleware that posed a nascent threat to the Windows operating system. Specifically, the Court of Appeals upheld the District Court's conclusion that Microsoft engaged in unlawful exclusionary conduct by using contractual provisions to prohibit computer manufacturers from supporting competing middleware products on Microsoft's operating system, prohibiting consumers and computer manufacturers from removing access to Microsoft's middleware products in the operating system, and reaching agreements with software developers and third parties to exclude or impede competing middleware products.

As the Department observed when it originally reached the settlement with Microsoft, the agreement was designed to stop Microsoft's unlawful conduct, to stop Microsoft from engaging in the same or similar conduct in the future, and to restore the potential for competition from middleware products.

"The final judgments have been successful in protecting the development and distribution of middleware products and in preventing Microsoft from continuing the type of exclusionary behavior that led to the original lawsuit," said Thomas O. Barnett, Assistant Attorney General in charge of the Department's Antitrust Division. "The Antitrust Division has made enforcement of the final judgments an important priority and will continue to vigorously enforce the antitrust laws in computer software markets."

In its filing today, the Department observed that: "Since the entry of the Final Judgments,

there have been a number of developments in the competitive landscape relating to middleware and to PC operating systems generally that suggest that the Final Judgments are accomplishing their stated goal of fostering competitive conditions among middleware products, unimpeded by anticompetitive exclusionary obstacles erected by Microsoft.”

Examples of the developments cited in the report include:

- The increased competition Microsoft’s Internet Explorer faces from web browsers such as Mozilla’s Firefox, Opera, and Apple’s Safari;
- The popularity of Apple’s iTunes and Adobe’s Flash for handling multimedia content;
- The increasing use of web-based services for e-mail and other applications that historically would have been handled by local applications; and
- The decisions by Dell and Lenovo to offer the option of computers pre-loaded with a Linux operating system rather than Windows

The filing also notes that, as Microsoft was never found to have acquired or increased its monopoly market share unlawfully, the final judgments were not designed to eliminate Microsoft’s Windows monopoly or reduce Windows’ market share by any particular amount. Rather, the final judgments were designed to re-invigorate competitive conditions that Microsoft had suppressed so that the market could determine the success of these software products. The final judgments are succeeding in that goal.

The Microsoft final judgments are scheduled to expire in November 2007. The Department concluded that it was necessary to extend certain provisions of the final judgments relating to protocol licensing until November 2009. Microsoft agreed to that extension, which was approved by the District Court in 2006. Microsoft has also agreed that the Department and state antitrust enforcement agencies may, at their discretion, apply to the court in fall 2009 for an additional extension to all or part of the extended provisions of the final judgments for a period of up to three additional years, through November 2012.

The next status conference hearing will take place on Tuesday, Sept. 11, 2007, before Judge Kollar-Kotelly.

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